International Brotherhood of Electrical Workers Local 98, AFL–CIO *and* NFF Construction, Inc.

Metropolitan Regional Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America *and* NFF Construction, Inc.
Cases 4–CD–1022 and 4–CD–1024

November 15, 2000

DECISION AND DETERMINATION OF DISPUTE
BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

A charge in this Section 10(k) proceeding was filed on April 21, 2000[1] by NFF Construction, Inc. (the Employer) alleging that the Respondent, International Brotherhood of Electrical Workers Local 98, AFL–CIO (Local 98), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the Metropolitan Regional Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America (the Carpenters). Subsequently, on May 8 the Employer also filed a charge against the Carpenters alleging that the Carpenters violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 98. The cases were consolidated and a hearing was held on July 6 before Hearing Officer Anne C. Ritterspach.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a New Jersey corporation with an office located at 619 Church Street, Pleasantville, New Jersey, is engaged in the business of general and carpentry contracting in the construction industry. Over the past 12 months the Employer provided services outside of the State of New Jersey with a value in excess of $50,000. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 98 and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

[1] All dates hereafter are in 2000.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The work dispute in this case was located at the construction sites of two Philadelphia hotels: the Ritz Carlton Hotel, 1400 South Penn Square, and the Hilton Garden Inn, 11th and Arch Streets. These construction projects occurred simultaneously, and the Employer contracted to do the unloading and installation of furnishings at both sites. The furnishings, referred to as "furniture, fixtures, and equipment" or "FF&E," include all items required to outfit a hotel room that are not built into the room itself, such as beds, dressers, lamps, nightstands, minibars, and televisions. The Arden Group, owner of the Ritz Carlton, contracted with the Employer to do the FF&E work on that hotel, and Switzenbaum Realty Capital, owner of the Hilton Garden, contracted with the Employer to do the FF&E work on that project.

The Employer assigned the FF&E work on both the Ritz Carlton and Hilton projects to its employees represented by the Carpenters. The work consisted of loading the items from the warehouse onto trucks, unloading them at the hotels, and setting up the rooms. The shipments were a mixture of various furnishings (e.g., beds, dressers, televisions, and lamps) that were grouped and loaded for installation on one floor or wing at a time. The work was done in two shifts; the night shift loaded and unloaded the trucks, while the day shift installed the furnishings in the rooms.

In early April, John Dougherty, president of Local 98, contacted Frank B. Lundy III, vice president of NFF Construction, and asked that the work of installing microwaves, minibars, and televisions for the Hilton Gardens be given to employees represented by Local 98. Lundy replied that the televisions had not been assigned to NFF, but that NFF was assigning the minibars and microwaves to the Carpenters. Dougherty told Lundy he would do what he had to do and implied that his next call would be to the Hilton's owner. Within the next few days Sam Switzenbaum, who represented the owner of the Hilton, met with Lundy and asked Lundy to see what he could do about assigning the work to Local 98. Lundy then spoke with Edward Coryell, executive secretary-treasurer/business manager of the Carpenters, about the possibility of assigning the minibars and microwaves to Local 98 because of pressure from that union. In both a conversation and follow-up letter, Coryell informed Lundy that such an assignment was unacceptable and would result in an initiation of picket lines by the Carpenters against all of the Employer's projects. Lundy did not reassign any FF&E work on the Hilton project to Local 98.

On a date unstated in the record, Lundy, upon the request of Bill Corazo, the business agent for Local 98, met with representatives from Local 98 regarding FF&E work at the Ritz Carlton. At the meeting Corazo requested that the televisions, lamps, and minibars be assigned to Local 98. He also stated that there would be problems on the dock regarding the minibars. Lundy explained that the Employer had a contract with the Carpenters and would continue to assign the work to them.

On April 21 Local 98 set up a picket line at the Ritz Carlton Hotel that shut down all work at the site. Picketers carried signs stating that the Employer was destroying building industry standards and paying its workers substandard wages and benefits. There is no evidence that Local 98 ever inquired about rates paid by the Employer or that the Carpenters had any complaints that the Employer was not paying contractual rates. When John Spitz, vice president of construction and development for the Arden Group, went out to the picket line to find out what could be done to end the strike, Corazo informed Spitz that Local 98 wanted to install the televisions, minibars, and swing lamps at the Ritz, all of which were being done by the Carpenters.

In an effort to allow the Ritz Carlton project to continue, Coryell suggested that Lundy hire members of Local 98 to install the swing arm lamps. On May 2 Lundy reassigned the installation of the swing arm lamps to Local 98. Both hotel projects have since been completed.

B. Work in Dispute

The disputed work involves the installation of televisions, minibars, and swing arm lamps at the Ritz Carlton, and the installation of minibars and microwaves at the Hilton Garden Inn.

C. Contentions of the Parties

Although the Employer did not file a posthearing brief in this case, it is clear from the evidence presented by the Employer at the hearing that the Employer contends the work in dispute should be assigned to employees represented by the Carpenters based on the terms of the collective-bargaining agreement, the Employer's practice and preference, and on economy and efficiency.

The Carpenters also did not file a posthearing brief. At the hearing the Carpenters took the position that all FF&E work should have been assigned to its members since that type of work has traditionally been performed by the Carpenters. The Carpenters also contend that without the threat of picketing they would not have agreed to the assignment of the swing arm lamps to Local 98.

Local 98 failed to appear at the hearing or file any brief in this case.

D. Applicability of the Statute

Before the Board may proceed with a determination pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute. The Employer has charged that both Local 98 and the Carpenters have violated Section 8(b)(4)(D).

The facts in this case indicate that sometime after the assignment of the FF&E work on the Hilton project to the Carpenters, Dougherty contacted Lundy and asked Lundy to assign the installation of minibars and microwaves to members of Local 98. During a meeting with Local 98 representatives at which Lundy said that the FF&E work at the Ritz was awarded to the Carpenters under their contract, Corazo told Lundy that there would be problems on the docks regarding the minibars. On April 21 Local 98 engaged in picketing at the Ritz Carlton. We find that there was reasonable cause to believe that Local 98's conduct in these incidents was designed to force an assignment of the FF&E work to its members.

We also find that it appears that the Carpenters engaged in threatening and coercive behavior to retain the assignment of the work in dispute. A letter from Coryell to Lundy declared that the disputed work must remain with the Carpenters or they would initiate picket lines not only at the situs of the disputed work but at all of the Employer's projects.

Accordingly, we find reasonable cause to believe that both the Carpenters and Local 98 have violated Section 8(b)(4)(D). There is no evidence or contention that there is any agreed upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Therefore we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreement

The evidence shows that the Employer is not failing to conform to a Board order or certification determining the bargaining representative for the employees performing the work in dispute. The Employer is a signatory to a national collective-bargaining agreement with the United Brotherhood of Carpenters and Joiners of America which provides that the Employer will be bound by a collective-bargaining agreement between the Carpenters and the Furniture Handlers and Installers Association, a division of Interior Finish Contractors Association of Delaware Valley. This agreement in part mandates the assignment of all FF&E work to employees represented by the Carpenters. In bidding on a job in the Philadelphia area the Employer relies on current wage and benefit rates under the contract. The Employer and Local 98 have no collective-bargaining agreement. Consequently, this factor favors an award of the disputed work to employees represented by the Carpenters.

2. Employer preference and past practice

The Employer clearly prefers that the work be performed by the Carpenters. The evidence shows that the Employer has never used electricians on any of its prior projects in the Philadelphia area to perform the type of work in dispute. Furthermore, Lundy testified that he ordinarily would not assign FF&E work to electricians but felt that in this case he had no choice. Therefore this factor favors an award of the disputed work to employees represented by the Carpenters.

3. Area and industry practice

The evidence demonstrates that within the past few years there have been several hotel projects in the Philadelphia area in which the Carpenters have been assigned and performed FF&E work that consisted of installation of minibars, televisions, and lamps.[2] Thus, this factor favors an award of the work in dispute to the employees represented by the Carpenters.

4. Relative skills

The work in dispute in this case consisted of unloading and distributing televisions, minibars, microwaves, and swing arm lamps and plugging them into wall outlets. Additionally, the swing arm lamps had to be bolted to the wall, the wire fed through a decorative tube that also had to be placed on the wall, and a snap-on plug placed at the end of the wire. There is no wiring, cutting, or taping of wiring involved in the installation of any of the above-mentioned furnishings. Based on the record, we infer that there is no special skill involved in the FF&E work in dispute in this case. Accordingly, this factor does not favor an award of the work to either employee group.

5. Economy and efficiency of operations

The FF&E is loaded onto the trucks so that entire rooms in a designated wing or floor can be set up when a particular shipment is unloaded. Televisions, minibars, swing arm lamps, and microwaves are mixed in with other FF&E (e.g., beds and dressers). If Local 98 employees were awarded the work in dispute it would be necessary for the Employer to hire two employee crews to work simultaneously: a Local 98 crew to perform the disputed work and a Carpenter crew to unload, distribute, and install the remainder of FF&E. The evidence indicates that there would not be enough work to keep Local 98 employee crews occupied for an entire 8-hour shift. Furthermore, up until May 2, the Carpenter employees performed the disputed work as part of their broader assignment to unload, distribute, and install FF&E. Consequently, this factor favors an award of the work to employees represented by the Carpenters.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Carpenters are entitled to perform the work in dispute. We reach this conclusion relying on the terms of the collective-bargaining agreement between the Employer and the Carpenters, the Employer's preference and past practice, area and industry practice, and the economy and efficiency of the Employer's operation resulting from its assignment of FF&E work to the Carpenters.

In making this determination, we are awarding the work to employees represented by the Carpenters, not to that union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of NFF Construction, Inc. represented by Metropolitan Regional Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America are entitled to perform the work of unloading and installing minibars and microwaves at the Hilton Garden Inn, 11th and Arch Street, Philadelphia, Pennsylvania, and the unloading and installing of televisions, minibars, and swing arm lamps at the Ritz Carlton Hotel, 1400 South Penn Square, Philadelphia, Pennsylvania.

2. International Brotherhood of Electrical Workers Local 98, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force NFF Construction, Inc. to assign the disputed work to employees represented by it.

[2] See *Electrical Workers Local 98 (AIMM,Inc.)*, 331 NLRB No. 156 (2000).

3. Within 14 days from this date, International Brotherhood of Electrical Workers Local 98 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing NFF Construction, Inc. by means proscribed by Section 8(b)(4)(D) to assign the disputed work in a manner inconsistent with this determination.